

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

MOTOCICLETTA, INC.,

Plaintiff,

VS.

PHILADELPHIA INDEMNITY
INSURANCE COMPANY,

Defendant.

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CASE NO. 4:17-cv-728

DEFENDANT PHILADELPHIA INDEMNITY INSURANCE
COMPANY'S NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Pursuant to 28 U.S.C. §§ 1332, 1441(b) and 1446(a), **Philadelphia Indemnity Insurance Company**, the Defendant in the above-styled case, files this Notice of Removal from the 348th Judicial District Court of Tarrant County, Texas to the United States District Court for the Northern District of Texas, Fort Worth Division.

INTRODUCTION

1. Plaintiff is Motocicletta, Inc. ("Plaintiff").
2. Philadelphia Indemnity Insurance Company ("Defendant") is the only Defendant.
3. Plaintiff commenced this first-party insurance case on August 22, 2017. Plaintiff asserted causes of action arising under Texas law for Defendant's alleged breach of contract, violation of the Prompt Payment of Claims Act (Tex. Ins. Code. Ch. 542), unfair claims settlement practices in violation of Tex. Ins. Code

ch. 541, violating the Texas Deceptive Trade Practices Act, negligence, and breaching the duty of good faith and fair dealing.

4. Philadelphia is timely filing this Notice of Removal by removing this action “within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.” 28 U.S.C. § 1446(b)(3).

VENUE IS PROPER

5. Pursuant to 28 U.S.C. § 1441(a), this action may be removed to this Court because it is the district and division embracing Tarrant County, Texas, the county in which the state court action is pending.

BASIS FOR REMOVAL

6. This is a civil action that falls under the Court’s original jurisdiction pursuant to 28 U.S.C. § 1332(a) and is one that may be removed to this Court based on diversity of citizenship in accordance with 28 U.S.C. §§ 1441 and 1446.

A. Complete Diversity of Citizenship Exists Between Plaintiff and Defendant.

7. Plaintiff is a for-profit corporation formed under the laws of the State of Texas that maintains its principal place of business in Tarrant County. *See* Plaintiff’s Articles of Incorporation and Plaintiff’s Texas Franchise Tax Public Information Report (attached as **Exhibit 1**); *see also* Pl.’s Orig. Pet. ¶ 2 (part of **Exhibit 4**) (Plaintiff “is a Texas Corporation.”).

8. Philadelphia is a corporation organized and existing under the laws of the State of Pennsylvania. *See* Affidavit of Eugene Angiolillo, attached as **Exhibit 2** (attesting to facts that Philadelphia is incorporated in and maintains its principal place of business in Pennsylvania); *see also* Pl.'s Orig. Pet. ¶ 3 (identifying Defendant as "a Pennsylvania insurance company").

B. The Amount in Controversy Exceeds \$75,000.

9. Plaintiff alleges it is suing for "monetary relief over \$200,000." Pl.'s Orig. Pet. ¶ 6.

10. Plaintiff therefore seeks damages, exclusive of interest and attorney's fees, in excess of the jurisdictional minimum of \$75,000.

C. Removal Is Appropriate Under the Court's Diversity Jurisdiction.

11. In light of these facts, the state court claim may be removed to this Court because: (i) this action is a civil action pending within the jurisdiction of the United States District Court for the Northern District of Texas; (ii) none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought, 28 U.S.C. § 1441(b)(2); and (iii) the amount in controversy exceeds \$75,000, exclusive of interests and costs.

FILING OF REMOVAL PAPERS

12. Pursuant to 28 U.S.C. § 1446(d), Philadelphia is providing written notice of the filing of this Notice of Removal to all other counsel of record. Further, Philadelphia is filing a copy of this Notice of Removal with the Clerk of the 348th

Judicial District Court of Tarrant County, Texas, where Plaintiff commenced this action.

13. Philadelphia is filing the following items concurrently with this Notice of Removal, or attaching them to this Notice of Removal as required by Northern District of Texas Local Rule 81.1:

- (a) completed versions of JS-44 Civil Cover Sheet, and Supplement to JS44 Civil Cover Sheet (**Exhibit 3**);
- (b) an index of all documents that identifies each document filed in the state court action, except discovery material, with each document individually tabbed and arranged in chronological order according to the state court file date, with copies of each such document (**Exhibit 4**);
- (c) all executed process in the case (**Exhibit 5**);
- (d) a copy of the docket sheet in the state court action (**Exhibit 6**);
- (e) a separately signed certificate of interested persons that complies with LR 3.1(c) or 3.2(e); and
- (f) a list of all counsel of record (**Exhibit 7**).

CONCLUSION

14. Philadelphia gives notice to the Court of their removal of the above-captioned action from the 348th Judicial District Court of Tarrant County, Texas, and request that further proceedings be conducted in the United States District Court for the Northern District of Texas, Fort Worth Division, as provided by law.

Dated: September 7, 2017

Respectfully submitted,

/s/ William R. Pilat

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CERTIFICATE OF SERVICE

I certify that on September 7, 2017, a true and correct copy of the foregoing *Notice of Removal* was forwarded to all other counsel of record, as listed below, through the electronic case filing system of the United States District Court for the Northern District of Texas:

Timothy M. Hoch
HOCH LAW FIRM, P.C.
5616 Malvey Avenue
Fort Worth, Texas 76107

/s/ William R. Pilat

William R. Pilat